

**IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

IN RE SQUIRRELS RESEARCH LABS LLC, *ET AL.*¹

Debtors

CASE No. 21-61491-RK
(JOINTLY ADMINISTERED)
CHAPTER 11
SUBCHAPTER V
JUDGE KENDIG

**REPORT OF SUBCHAPTER V TRUSTEE AND STATEMENT CONCERNING CONFIRMATION OF
MIDWEST DATA CENTER PLAN**

Frederic P. Schwieg, Subchapter V Trustee (the “Trustee”), submits this report to the Court in anticipation of the upcoming hearing on confirmation of the proposed The Midwest Data Company’s Plan of Reorganization Dated February 21, 2022 [Doc. 170] (“MWDC” and the “Plan”) based on the Trustee’s review of the Plan, his investigation concerning same, the requirements for confirmation, and the overall posture of this case.

I. BACKGROUND

1. MDWC filed its petition on November 23, 2021. The Debtor made the election upon filing to have this case heard and considered under the chapter 11 subchapter V provisions added by the Small Business Restructuring Act of 2019.
2. On November 30, 2021, the Office of the United States Trustee appointed Mr. Schwieg as the Trustee for this case [Doc 28].
3. During this case Squirrels Research Labs LLC (“SQRL”) sold most of its physical assets to Instantiation LLC for \$3.0 million which was paid to Avnet LLC pursuant to a court order approving the sale [Doc. 131]. As a part of the sale MWDC sold approximately \$10,000 worth of assets to Instantiation. Instantiation also provided debtor-in-possession financing to the debtor during the pendency of the sale process.
4. The Trustee has analyzed the Plan and has considered both the technical requirements for

¹ The “Debtors” in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Squirrels Research Labs LLC (9310), case no. 21-61491 and The Midwest Data Company LLC (1213), case no. 21-61492.

confirmation and the goals of the subchapter V provisions of the Code. The Trustee submits this report to assist the Court in its evaluation of the Plan. *See* 11 U.S.C. § 1183(b) (setting out the duties of the Trustee to include being heard at any hearing that concerns confirmation of a plan).

II. ANALYSIS

The Plan proposes to pay creditors from its income to be generated by assuming certain hosting agreements and from recoveries on an insurance claim. The Plan notes that the only significant creditors are Instantiation for \$250,000 in debtor-in-possession financing at approximately \$20,000 in unsecured claims. The Plan proposes to pay all claims in full.

A. The Plan's Distribution: Fair and Equitable as to Unsecured Claims

5. For unsecured claims under Subchapter V, for a plan to be “fair and equitable,” it must, *inter alia*, satisfy the provisions of 11 U.S.C. § 1191(c)(2)(A):

the plan provides that all of the projected disposable income of the debtor to be received in the 3-year period, or such longer period not to exceed 5 years as the court may fix, beginning on the date that the first payment is due under the plan will be applied to make payments under the plan; ...

6. The Bankruptcy Code does not provide a definition of the term “projected disposable income.” It does define the term “disposable income.” Does this section require the payment of the projected disposable income regardless of what the actual disposable income turns out to be, or does it only require the payment of the actual disposable income earned by the Debtor? If the Code requires only payment of the actual disposable income, then creditors “get what they get.” If the Code requires payment of the *projected* disposable income, the Debtor must make the projected payments to creditors or suffer the consequences set forth in the Plan. However, in that case any additional income earned in excess of the projected disposable income would belong to the Debtor. The limited available case law has not resolved this issue, with plans drafted both ways having been confirmed by courts. The Trustee’s position is that a proposed plan may specify either option. The Plan proposes to pay the projected disposable income over 3 years regardless of MWDC’s actual income and therefore the Plan complies with the

requirements of the Code in this respect.

7. The projected disposable income in the Debtor's projection attached as Exhibit B to the Plan is projected on estimates made by the Debtor. The Bankruptcy Code requires that confirmation of the Plan "is not likely to be followed by the liquidation, or the need for further financial reorganization, of the Debtor or any successor to the Debtor under the plan, unless such liquidation or reorganization is proposed in the plan." 11 U.S.C. § 1129(a)(11). The feasibility standard is whether the plan offers a reasonable assurance of success; success need not be guaranteed. *Kane v. Johns-Manville Corp.*, 843 F.2d 636, 649 (2d Cir. 1988); *Prudential Insurance Co., v Monnier (In re Monnier Brothers)*, 755 F.2d 1336, 1341 (8th Cir. 1985).

B. Liquidation Analysis and the Best Interests of the Creditors

8. Section 1129(a)(7) requires creditors to receive, under the Plan, property of a value at least than the amount that the creditor would receive or retain if the Debtor were liquidated under chapter 7. 11 U.S.C. § 1129(a)(7). This is the "best interest of the creditors test." The Plan's Liquidation Analysis shows a Chapter 7 liquidation creditors will still receive 100% payment. See Exhibit A of the Plan.

C. Summary of the Plan and the Code Provisions Relating to Confirmation

9. To assist the Court, the Trustee has reviewed the confirmation requirements and provides the following summary. The Trustee believes that the Debtor has proposed a Plan that is in the best interest of the creditors and should be confirmed. The Trustee's analysis of the Plan is set forth below:

Code Section	Description of Requirement	Comment
1190(1)	The Plan must include a background history, a liquidation analysis, and projections	Included in pages 1-7 and Exhibits A and B of the Plan
1190(2)	A portion of Future earnings must be committed to execute the Plan.	Exhibit B shows the estimated future earnings to be committed to the Plan.
1191(b)	The Plan must be fair and equitable.	See discussion in Part A and B above .
1191(c)(1) &	To be fair and equitable, the	NA, see discussion in Part A above.

1129(b)(2)(A)	Plan must provide for certain recovery to secured creditors.	
1191(c)(2)	To be fair and equitable, the Plan must commit the Debtor's projected disposable income for between three and five years	<i>See discussion in part B above.</i>
1191(c)(3)(A)	The Debtor must be able to make all plan payments.	See discussion in paragraph 7 above
1191(c)(3)(B)	The Plan must provide appropriate remedies to protect claimants in the event of a default by the Debtor	Article 9 of the Plan permits parties in interest to move to enforce the Plan, place the Trustee in control of the Debtor's assets or to dismiss the case after a default.
1129(a)(1)	The Plan must comply with all applicable provisions of Title 11	The Plan appropriately classifies claims and interests pursuant to § 1122 without discrimination, and it further meets the basic requirements of § 1123. It appears to comply with all provisions of Title 11.
1129(a)(2)	The Plan proponent must comply with all applicable provisions of Title 11	The Debtor appears to have complied with the applicable provisions of Title 11. The Debtor is current with its monthly operating reports.
1129(a)(3)	The Plan must be proposed in good faith and not by any means forbidden by law	The Trustee, working with Debtor's counsel in this case, believes that the Plan has been proposed in good faith and not by means forbidden by law.
1129(a)(4)	The Court has approved or will likely approve all applicable costs and expenses as reasonable	Article 4 appropriately deals with administrative expenses. The Plan does not absolve professionals or the Trustee from seeking Court approval of compensation. The Trustee is not aware of any extraordinary costs.
1129(a)(5)	The Debtor must identify certain individuals and their affiliations	Article 8 provides that the Debtor's current management team will stay in place and while the compensation is in the projection it is not specifically identified, and this will be addressed by the confirmation order or an amendment.
1129(a)(6)	Governmental regulatory commissions with jurisdiction have approved rate changes proposed under the Plan	Not applicable.
1129(a)(7)	The Plan must satisfy the best interests of the creditors test	See discussion in part A and B above.
1129(a)(9)	The plan must provide the requisite treatment for	Article 4 of the Plan provides for the treatment required for administrative

	certain priority claims	and priority claims.
1129(a)(11)	The Plan is feasible	See Paragraph 12 above.
1129(a)(12)	All fees under 28 U.S.C. § 1930 have been paid or are provided for under the Plan	It appears that the Debtor has paid all fees to the Court and there are no UST fees in subchapter V cases.
1129(a)(13)	The Plan ensures the continuation of all retiree benefits	Not applicable.
1129(a)(14)	Treatment of domestic support obligations by individual debtors	Not applicable.
1129(a)(16)	Transfers under the plan comply with applicable non-bankruptcy law	Not applicable.

Respectfully submitted,
/s/ Frederic P. Schwieg, Esq.

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 Subchapter V Trustee

CERTIFICATE OF SERVICE

I hereby certify that a copy of this Report electronically transmitted on or about the date filed via the Court's CM/ECF system to the following who are listed on the Court's Electronic Mail Notice list

Electronic Mail Notice List

21-51022-amk Notice will be electronically mailed to the U.S. Trustee, and:

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